

ALEC 35th Annual Meeting – Special Issue

Celebrating
35
Years
1973-2008

INSIDE ALEC

July 2008

A Publication of the American Legislative Exchange Council



Sales Taxes Threaten E-Commerce



New Model Legislation

Putting State Budgets Online: Promoting Transparency



Federal Watch: Unions Disrupt Public Safety

Chairman's Column

Recognizing ALEC's Champions

By Arkansas State Sen. Steve Faris, Senate Majority Whip



Each year ALEC's Task Forces discuss, debate, and vote on dozens of model bills. It is our defined process that produces final model legislation that has the support of the public and private sector, and stands for our shared principles of individual liberty, federalism, limited government, and free markets.

At our Spring Task Force Summit, held in my home state of Arkansas this past May, ALEC Task Forces approve and impressive 30 new model bills.

This is legislation that we can take back to our states to help grow our economies, spur entrepreneurship, create new jobs, protect our citizens from crime, and improve education. I encourage you to look in this issue of our magazine for the list of model bills that were just approved and then visit us online for the complete text of each one.

Passing model bills in our task forces is only the first part of the process. For these ideas to have effect, and to be able to help people in need, they must be introduced in state legislatures. Someone has to champion them, recruit co-sponsors, and push these bills through until they become law. Each year about 1,000 bills are introduced across state legislatures, based on ALEC model legislation, and about 20 percent of them eventually become law.

None of this would be possible without dedicated legislators, eager and willing to take on entrenched interests, to do what is right. We all know how hard it is to enact real change and those legislators who keep pushing year after year and keep introducing good legislation are the real heroes of ALEC.

It is not possible to thank every legislator individually, but each year we do select a handful that truly stand out for their efforts and dedication to ALEC and our principles. These individuals are our Legislators of the Year. We will recognize them here; at our Annual Meeting in Chicago, the city where ALEC began 35 years ago. I encourage you to seek them out, congratulate them, learn from them, and better still, emulate them.

All great initiatives start from an idea, but it takes devoted people, committed to a common purpose, to make that idea a reality. It is the members of ALEC that turn ideas into action, and for that I thank you.

INSIDE ALEC

July 2008

A Publication of the American
Legislative Exchange Council

2008 National Chair

Arkansas State Sen. Steve Faris

Private Enterprise Board Chairman

Jerry Watson
American Bail Coalition

Executive Director

Alan B. Smith

Senior Director of Policy and Strategic Initiatives

Michael Bowman

Director of Public Affairs

Jorge Amselle

ALEC Exhibits & Advertising

Exhibiting or advertising at an ALEC event is a great way to promote your company to members of both the private and public sector. If you are interested in exhibiting or advertising at an ALEC meeting, please contact Rob Pallace at 202-466-3800 or email him at exhibits@alec.org.

AMERICAN LEGISLATIVE EXCHANGE COUNCIL

© American Legislative Exchange Council
1101 Vermont Ave., NW, 11th Floor
Washington, D.C. 20005
(202) 466-3800 • Fax: (202) 466-3801
www.alec.org

ALEC Calendar

December 4-6, 2008

States & Nation Policy Summit

Washington, D.C.

April (Tentative), 2009

Spring Task Force Summit

Memphis, TN

July 15-19, 2009

ALEC Annual Meeting

Atlanta, GA

December 2-4, 2009

States & Nation Policy Summit

Washington, D.C.

ALEC's Spring Task Force Summit Roundup



Arkansas Governor Mike Beebe and ALEC National Chairman Sen. Steve Faris at the State Capitol with ALEC's Champion Award, presented earlier to Gov. Beebe in Hot Springs. (Photo: Malvern Daily Record.)



Dr. John Agwunobi, Senior Vice President and President for the Professional Services Division for Wal-Mart Stores, speaks on private sector solutions for healthcare.

Hot Springs, Arkansas, played host to the 2008 ALEC Spring Task Force Summit, one of our busiest and most successful in recent memory. Over 400 ALEC members registered to attend this meeting in what proved to be a fascinating location.

For centuries Native American tribes took advantage of the soothing natural hot springs and in 1832 it became the nation's first federally protected natural area. Hot Springs is, in fact, the only city located entirely within a National Park. Celebrities, sports figures, and politicians, including President Franklin Delano Roosevelt, have all spent time here. It is also the hometown of President William Jefferson Clinton.

ALEC Task Force members faced a heavy workload as they considered dozens of new model bill and resolutions, dealing with everything from special education, and taxes and fees, to gas taxes, healthcare and mortgage fraud. Approved were 30 new pieces of official ALEC Model Legislation (see Task Force Updates on page 11).

A new ALEC award was also unveiled, The ALEC Champion Award, and presented to Arkansas Gov. Mike Beebe by our National Chairman, Sen. Steve Faris (AR). This award was presented to Gov. Beebe in recognition of his successful efforts at cutting the state sales tax on groceries in half, saving taxpayers nearly \$200 million annually, and his commitment to promoting policies that further economic development.

ALEC members also heard from distinguished speakers such as the Senior Vice President and President for the Professional Services Division for Wal-Mart Stores, Dr. John Agwunobi. Dr. Agwunobi, who previously served as the Assistant Secretary for Health for the U.S. Department of Health and Human Services and an Admiral in the U.S. Public Health Service Commissioned Core, spoke about how the private sector can bring low-cost, high-quality health care services to citizens who lack medical insurance. Specifically, Dr. Agwunobi spoke of the success of Wal-Mart's \$4 Generic Prescription Program.

Stuart Rothenberg, editor and publisher of The Rothenberg Political Report, and Dr. Jan R. van Lohuizen, President of Voter/Consumer Research, were also on hand and spoke regarding the upcoming national elections. Both notable speakers gave their predictions regarding the outcome of the elections based on national and regional polls and their knowledge of the candidates.

On Saturday, long-time ALEC Private Enterprise Board member Jim Epperson, President of AT&T Texas, spoke regarding a survey of ALEC's public and private sector members his company completed last year. Mr. Epperson discussed how their public affairs professionals had taken the results of the survey and created an easy to use flowchart, explaining the most valuable services ALEC provides, to be used as a new member recruitment tool.



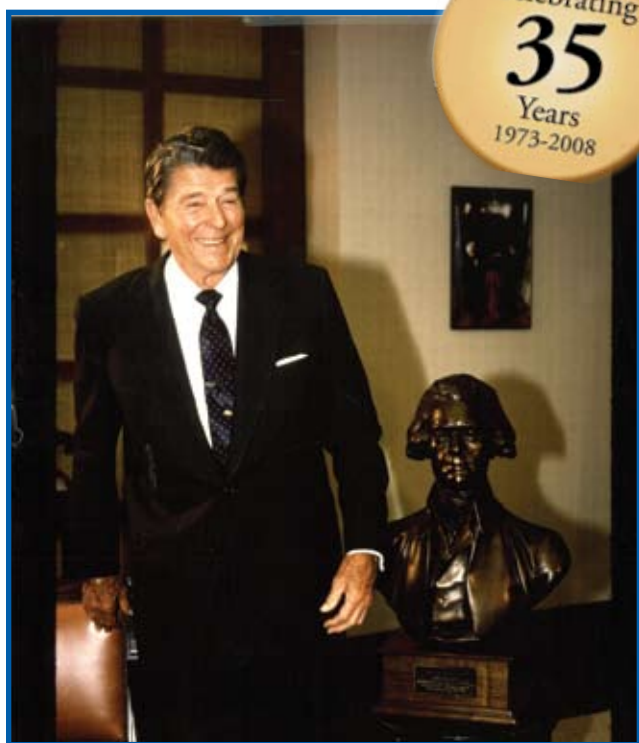
ALEC Private Enterprise Board member Jim Epperson, President of AT&T Texas discusses ALEC's Member Survey.



Stuart Rothenberg, editor and publisher of The Rothenberg Political Report, discusses the upcoming national elections.

35 Years of Serving State Legislators: The American Legislative Exchange Council, Then and Now

By Kirsten Kielsgard



President Ronald Reagan receives ALEC's first Thomas Jefferson Award, 1990

In March of 1973, little more than a dozen people met at the Skyline Inn in Washington, D.C., with a common purpose in mind: to establish an organization for conservative state legislators. This meeting was organized by Mark Rhoads, a former State Senator from Illinois and currently a private sector member of ALEC, and Lou Barnett, a veteran of then-Gov. Ronald Reagan's 1968 Presidential Campaign.

While working for U.S. Congressman Ed Derwinski (R-IL), Mark Rhoads had seen that while there were organizations for state legislators, none were geared specifically towards promoting conservative principles. Thus, he envisioned the Conservative Caucus of State Legislators (CCSL), ALEC's original name. This new organization would be led by legislators and staffed by conservatives with a shared belief in limited government, free markets, federalism, and individual liberty.

ALEC's first meeting occurred in one conference room, loaned by Paul Weyrich, during a larger conference of conservatives. The assembled included Rep. Henry Hyde, then the Majority Leader of the Illinois House of Representatives; Robert Kasten and Tommy Thompson of Wisconsin; John Engler of Michigan; Terry Branstad of Iowa; John Kasich of Ohio; Gerald Stromer of Nebraska; and Don Totten of Illinois; all state legislators at that time. The American Conservative Union, for whom Lou Barnett worked, also graciously provided funds making the first conference possible. By the end of March, Mark Rhoads renamed the group the American Legislative Exchange Council (ALEC), and in September of 1973, a larger meeting of conservative state lawmakers was held in Chicago.

ALEC's membership grew tremendously within the first 10 years of ALEC's founding. According to Rhoads, "the annual meetings during the late '70s and early '80s were greatly dedicated to composing and publishing Model Legislation. The outcome was recognition and a tangible product to demonstrate the success of ALEC."

Indeed, ALEC was, and remains today, a unique innovator among state legislator organizations. ALEC expanded by bringing in the private sector as equal members and partners in the 1990s. ALEC legislators recognized the value of having the private sector participate in our model legislation process and provide input on best practices and model solutions for the problems facing many states.

Over the past 35 years, ALEC's models bills have adapted to keep up with the ever changing demands of public policy, but our core principles have remained as solid today as they were in the days of our founding fathers. These principles have shaped our model legislation, and energized our membership, and they will continue to do so.

Kirsten Kielsgard is the Public Affairs Assistant for the American Legislative Exchange Council and a Media Arts & Design Major concentrating in Corporate Communications at James Madison University.

States Fight for More Transparency and Accountability in Budgets

By Jonathan Williams



“We might hope to see the finances of the Union as clear and intelligible as a merchant’s books, so that every member of Congress and every man of any mind in the Union should be able to comprehend them, to investigate abuses, and consequently to control them.” – President Thomas Jefferson

With the advance of computer and network technologies, Jefferson’s vision is now more feasible than ever. States now have the capacity to publish their yearly budgets on the Internet, providing taxpayers with a searchable, manageable report of all state expenditures from year to year. This is the central principle behind budget transparency legislation.

Budget transparency’s ultimate aim is to see all information on states’ budget expenditures provided in a readily accessible format so that any interested party can use this resource. In the past, government budgets were available in print, but the time necessary to mull through thousands of pages to track down relevant information was prohibitive. Budget transparency legislation solves this problem by providing taxpayers the ability to see where their tax dollars are going in a detailed, item-by-item manner, across all departments, from any computer, free of charge.

While all budget transparency legislation shares this basic goal, the specifics of the legislation vary among different models. The most basic formulations call on government to do little more than publish budget expenditures online in some format and update that data every year. Stronger models go a few steps further, such as requiring states to publish performance results for state expenditures, listing funding sources

for agencies and programs, mandating item-by-item listings, and integrating advanced search functionality for ease of research and cross-referencing.

In 2008 alone, budget transparency legislation has been introduced in 28 states and has enjoyed widespread support on a bipartisan basis. In 2007, no less than five states enacted budget transparency legislation (HI, KS, MN, OK, and TX). Governors in four additional states issued executive orders to enhance budget transparency by establishing searchable online databases accessible for the general public (FL, MO, SC and TX). Some of these sites are already operational.

One such example is the Missouri Accountability Portal (<http://mapyourtaxes.mo.gov>), which was created by executive order of Gov. Matt Blunt. On the site, one can search by agency, category, contract, and vendor to track down state expenditures. The portal also contains data on state employee salaries and tax credits issued. The site is easily navigable and lists all expenditures per fiscal year, down to items that cost only a few dollars.

Another fine example is Oklahoma’s OpenBooks website (<http://www.ok.gov/okaa>). This site was created as a result of the “Taxpayer Transparency Act,” unanimously passed by the Oklahoma Legislature in 2007 and signed into law by Gov. Brad Henry.

In addition to expenditure data on agencies, payroll, and vendors, this site also lists the funding sources for government agencies and programs. In the first few months of operation alone, sites like these have streamlined the process of budget research, reduced the burden of paperwork on state agencies, and generated millions of hits, demonstrating real public interest in such a service.

Although the success of these sites is impressive, it should be noted that most of the states that recently mandated budget transparency are still in the process of creating their websites, and some of the current state budget sites lack some functionality. Because they have only been operational for a few months, most have only a part of the full range of data they will eventually cover. Others have not implemented key word search functionality, and some suffer from user interfaces that are difficult to navigate.

Nevertheless, it is encouraging to see such progress in such a short time period. Improved functionality will be implemented in the near future on each of the current sites, as well as expanded databases to include all state funding and expenditure information. These examples prove that budget transparency sites can be established within only a few months time after the passage of transparency legislation and can be further upgraded in the future.

In 2008, ALEC members across the country are fighting for increased budget transparency. The state of Washington serves as a fine example for 2008, unanimously passing legislation that will dramatically improve budget transparency. Stalwart ALEC member Senator Val Stevens took a leadership role in promoting budget transparency in Washington. "My constituents tell me they'd need a Ph.D. from MIT to understand how and where Olympia spends their money," said Sen. Stevens. "With this new state budget website, the average person can track who gets the money, what they have to deliver, and whether or not we're getting what we pay for. That kind of government transparency is long overdue."

Unfortunately, the movement for increased transparency and accountability has suffered some defeats as well. South Dakota governor Mike Rounds vetoed budget transparency legislation in his state this year on the basis of its estimated cost of \$600,000.

ALEC member Rep. Hal Wick introduced the South Dakota transparency legislation, and led a valiant effort to override the governor's veto. The override was hugely successful in the South Dakota house, but failed in the senate by a margin of only two votes. Supporters have pointed out that \$600,000 is an exceedingly high estimate of what the real costs are likely to be given the experience of other states.

The fiscal impact statement from similar legislation passed in Oklahoma last year estimated the total outlay for programming and implementation at less than \$300,000. The fiscal note for Texas showed "no fiscal implication to the State is anticipated" and Missouri's budget office said its site was done "within existing resources."

Tech companies based in-state are often able to help set up the site and there remains the possibility of free assistance with programming and source code from companies like Microsoft and Google. By partnering with the private sector, costs for the projects can be further defrayed. Regardless, as ALEC member Sen. Randy Brogdon of Oklahoma stated "any cost for implementation is far less than the cost of not knowing where tax dollars are being spent."

Advocates of budget transparency believe that taxpayers should be able to easily access and track how their state is spending their tax dollars. "Sometimes common sense and public policy do meet and this is one of those times," said Washington State Auditor Brian Sonntag. "It's never wrong to open the doors and let people in and see what their government is doing."

Jonathan Williams is the Director of the Tax and Fiscal Policy Task Force at the American Legislative Exchange Council.





ALEC International Update

The Case for Expanding ALEC's Role in International Affairs

By Rick Lipman

The common conservative mistrust of the United Nations is well-known. While there are many reservations one may have regarding the organization, two of the strongest and most often-cited are these: First, at its core, the UN exists fundamentally to forfeit the sovereignty of nations in favor of the consensus of the international community. The notion of handing U.S. sovereignty off to any other power is anathema to many of us, and rightly so. Second, the UN has demonstrated that it is often unable to efficiently implement the powers and regulations it has pursued. Even if one is concerned with the purpose of the organization, there is cause for even greater concern regarding whether the UN is capable of carrying out that purpose well and wisely.

This is why ALEC aims to apply for membership as a Non-Governmental Organization (NGO) in consultative status with the UN. If successful, our voice would be added to a chorus of over 3,000 organizations, including the AARP, the American Psychological Association, Lawyers Without Borders, and the Salvation Army. Achieving consultative status with the UN would give ALEC a new and unique edge in its mission to defend itself and its clients against governments, policies, and global trends that continue to challenge our individual liberties and free market interests.

This connection with the UN and access to other governments, Inter-Governmental Organizations (IGOs) and NGOs would enable us to promote the Jeffersonian principles of free markets, direct government accountability and individual liberty on the world stage to an unprecedentedly wide audience. This is also crucial at a point in world history where Jeffersonian principles themselves are under direct assault by almost every national government and international institution in existence.

If this solution seems counter-intuitive, consider the implications. Consultative status would give ALEC the ability to attend international conferences called by the UN as well as General Assembly special sessions. It would also grant ALEC regular attendance at meetings of the Economic and Social Council (ECOSOC) and all its subsidiary bodies, speaking rights and floor time, the option to present written statements both on the agenda and in response to it, and the ability to serve as "technical experts, advisers, and consultants to governments and Secretariat."

Even sharing such a spotlight with many other organizations, such benefits are not to be taken lightly. The ability to exert influence within a context that has historically challenged our interests is an exciting development. It would also grant us in return something rare and exceedingly valuable: a voice that stands apart from, and just a little bit above, the crowd.

ALEC will gain the ability to craft an international agenda, publicly repudiate misinformation, and begin identifying and connecting with allies we have not yet even met. While both getting our message across and ensuring that it does not fall on deaf ears are labor-intensive tasks, both are also critical to the survival and expansion of our international outreach. We should jump at every opportunity to build new bridges.

The future of Jeffersonian ideals requires a new medium and new ways of thinking about how to build relationships and communicate our message. The opportunities presented, and the benefits gained, by achieving consultative status imposes on ALEC the obligation to begin considering a dramatic expansion of our role in the international sphere.

Rick Lipman is a Research Assistant in International Relations at ALEC, and a senior at Susquehanna University. He is pursuing a Bachelor's in International Studies with emphases in diplomacy and the Middle East.

Government Killed the Internet Star:

How State Sales Taxes Threaten the Online Commerce

By Seth Cooper

States have always possessed the power to tax commercial activity taking place wholly within their respective borders; however the U.S. constitution forbids states from placing undue burdens on interstate commerce. But, in a strange twist, the New York Assembly is trying to break out of these constitutional limits and expand its tax borders into internet commerce.

Online retailers are the targets of New York's tax adventurism. Those retailers routinely ship goods across the borders of their home state to reach customers in other states. Such retailers send goods through the mail system, public roadways, and other common carrier routes to states where those businesses have no offices, no warehouses, nor any other physical presence. With the explosion of internet e-commerce, online retailers likewise send goods across state lines to online customers. New York's new tax law seeks to unfairly get a cut of the action by expanding its taxing powers to reach out-of-state online retailers.

AB 9807: New York's Extraterritorial Tax on Interstate Commerce

New York is hoping to fill budgetary shortfalls by reaching its taxing powers beyond state borders. As part of its new budget, New York passed a first-of-its kind law that saddles sales tax collection burdens on online retailers in every state of the country. Under New York Assembly Bill 9807, retailers with no physical presence or employees working anywhere in New York now face tax collection duties, courtesy of the Empire State.

AB 9807 requires out-of-state retailers to collect sales and use taxes on purchases made by New York residents. Under the terms of this new law, New York asserts taxing authority over any retailer who pays a New York resident for referrals:



...a person making sales of tangible personal property or services taxable under this article ("seller") shall be presumed to be soliciting business through an independent contractor or other representative if the seller enters into an agreement with a resident of this state under which the resident, for a commission or other consideration, directly or indirectly refers potential customers, whether by a link on an internet website or otherwise, to the seller, if the cumulative gross receipts from sales by the seller to customers in the state who are referred to the seller by all residents with this type of an agreement with the seller is in excess of ten thousand dollars during the preceding four quarterly periods...¹

This presumption *may be rebutted* by proof that the resident with whom the seller has an agreement *did not engage in any solicitation* in the state on behalf of the seller that would satisfy the nexus requirement of the United States constitution during the four quarterly periods in question.²

Continued on next page

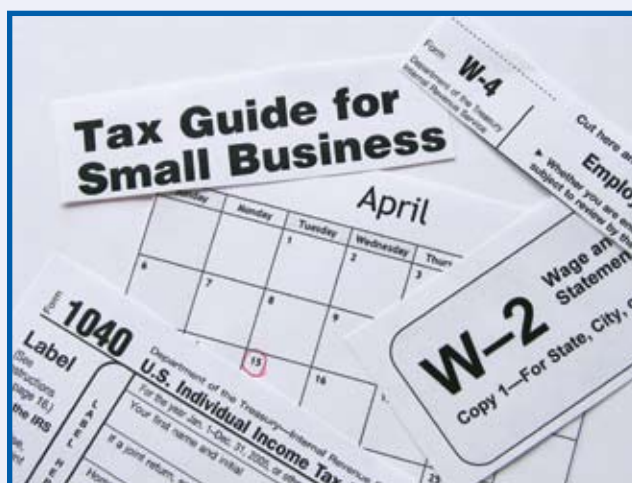
Under the new law, out-of-state retailers who so much as pay sales commissions for online ad referrals from New York-based Web sites trigger tax collection obligations.³ For out-of-state retailers who hope to escape such taxation, the new law burdens them with the near-impossible task of proving a negative—i.e., proving each individual associate didn't directly or indirectly solicit business. This makes the law's presumption favoring taxation is all but irrebuttable.

AB 9807 requires out-of-state retailers who sell products to New Yorkers to register as vendors with New York tax officials, beginning June 1. Any retailers who fail to comply with the registration requirements face civil and even criminal penalties. In addition, New York tax officials have threatened out-of-state retailers refusing to register with possible auditing and charges for years of back taxes.

AB 9807 Flunks the Federalism Test

New York's new sales and use tax law is plagued by serious constitutional problems. Most significantly, AB 9807 improperly usurps the power of Congress to regulate interstate commerce. Article I, Section 8 of the federal constitution provides that "Congress shall have the power...to regulate commerce...among the several states." Under a long line of U.S. Supreme Court rulings, states are barred from placing "undue burdens" on interstate commerce.

In the context of state taxation of commerce, the Supreme Court held in *Quill Corp. v. North Dakota* (1992) that businesses lacking a physical presence or an employee or agent in another state cannot be subject to that state's sales and use taxes requirements.⁴ Businesses that reach customers only through common-carriers—such as public roadways or the mail—can't be subjected to tax collection burdens. *Quill* also noted that a business's mere licensing of software to customers in another state similarly fails to meet the "substantial nexus" required before tax collection obligations can be imposed. An in-state sales representative can sometimes establish the physical presence required for tax purposes. But in an earlier case called *Tyler Pipe Industries, Inc. v. Washington State Department of Revenue* (1987), the Supreme Court affirmed that this hook for taxation was limited: an in-state representative must be "significantly associated with the taxpayer's ability to establish and



maintain a market in the state.”⁵ But AB 9807 flies in the face of the rules set down in *Tyler Pipe* and *Quill*.

The Supreme Court left Congress latitude to deal the issue of interstate tax burdens. A pair of bills currently before Congress (HR 5267 and S 1726) addresses state taxation of interstate commerce. But Congress has considered similar legislation in the past and has so far declined to pass anything. Under *Quill*, the Congress—and not an individual state—remains the proper venue to address taxation of online retailers conducting interstate commercial activities.

Target: Amazon.com?

Amazon.com has challenged AB 9807's constitutionality in New York State Court. The Washington State-based online retailer sells goods over the Internet to New Yorkers (and to consumers across the country). The title to goods purchased through Amazon's website passes to customers at point of origin of shipment, rather than the point of deliver to the customer.

Although Amazon has neither a physical presence in New York nor any employees or agents working in the state, some New Yorkers have placed online advertisements on their own websites for Amazon through the company's "Associates Program." The independent advertisers earn a small amount for each ad-click referral resulting in a purchase at Amazon. "Associates Program" advertisers operate independently from Amazon, choosing for themselves the format and placement of Amazon "click through" ads on their respective websites.

Continued on page 15

NEW 2008 Spring Task Force Summit Model Bills

ALEC task forces passed 30 new model bills at the Spring Task Force Summit in Hot Springs, AR, in May. Titles and summaries by Task Force are included here and the full model bills are available for ALEC members online at www.alec.org.

EDUCATION TASK FORCE

Resolution Supporting State Efforts To Reduce The Number Of Students Unnecessarily Referred To Special Education. This resolution encourages states to study their special education referral processes and consider efficiency tools such as early intervention services.

TAX AND FISCAL POLICY TASK FORCE

An Amendment to ALEC's TABOR Model Legislation. These amendments make ALEC's existing model language on a Taxpayers' Bill of Rights (TABOR) more comprehensive by applying the limits to the local level. This prevents the massive growth in local spending and taxes from undermining the TABOR limitations on government growth.

A Bill to Protect Vehicle Fees and Taxes for Highway Purposes. This model bill provides a solid framework to ensure that state highway taxes and fees are used exclusively for road construction and maintenance – thereby ending the common practice of raiding transportation “trust funds” for other budgetary needs.





A Resolution Urging Congress to Support Equitable Treatment of Federal Deductibility of State and Local Taxes. This resolution urges Congress to protect taxpayers by ruling that any new state or local taxes or fees that replace currently deductible taxes or fees shall be declared deductible at the federal level by the Internal Revenue Service.

A Resolution Urging Congress to End Discriminatory State and Local Taxes on Automobile Renters. This resolution encourages Congress to eliminate discriminatory State and Local Taxes on automobile renters by passing H.R. 2453, the End Discriminatory State Taxes on Automobile Renters Act of 2007 (EDSTAR).

Resolution to Oppose NCCUSL Effort to Rewrite the Uniform Division of Income for Tax Purposes Act. This resolution opposes the effort being undertaken by the National Conference of Commissioners on Uniform State Laws (NCCUSL) to rewrite the Uniform Division of Income for Tax Purposes Act (UDITPA). This resolution recognizes that state tax competition and the fundamental right of states to design their own tax structures to reflect the unique nature of their geographical, cultural, and political climates weighs against the NCCUSL effort to develop a uniform approach to taxing income.

COMMERCE, INSURANCE & ECONOMIC DEVELOPMENT TASK FORCE

Professional Licensure and Certification Reform Act. Limits new proposals to enact an occupational or professional licensure and certification on a business by the general assembly to those that affect the public health, safety, and welfare; limits new licensures and certifications affecting businesses to those that affect the public health, safety, and welfare.

Resolution on Occupational Licensing. This Resolution calls on states to review their occupation licensure laws in order to determine if licensing should be made voluntary instead of mandatory. The resolution also cites numerous economic and social problems created by mandatory occupational licensure requirements.

Loan Originators Voluntary Registration.

Establishes an optional loan originator registration program within the Secretary of State's (SOS) Office. The bill would allow for a voluntary certification and title for home loan agents.

Open Collective Bargaining. The bill requires that public-sector unions and government representatives hold collective bargaining sessions which are open to the public. The bill also requires that documents from the collective bargaining session be made available to the public.

Constitutional Amendment on Gas Taxes. This legislation specifies that a state must use vehicle, driver license, and gas tax revenues for the maintenance and construction of existing and new roads. This would prohibit states from using designated "road-user" fees on mass transportation and other non-transportation related items.

Resolution in Support of the Columbia Free Trade Agreement. The Resolution urges Congress to pass the Columbia Free Trade Agreement.

TELECOMMUNICATIONS & INFORMATION TECHNOLOGY TASK FORCE

Model Legislation to Pursue and Control Child Predators. This bill addresses online safety issues by requiring internet access providers to make filtering, blocking and monitoring tools available to parents, and requiring the teaching of online safety in the classroom. It also increases post-conviction controls on convicted sex offenders, ads reporting requirements, and creates new crime categories.

Resolution Opposing Government Involvement in Commercial Negotiations. This resolution calls upon government to oppose efforts to adopt legislation requiring mandatory arbitration to resolve commercial disputes. It affirms that the marketplace is the most successful and enduring economic system and is fully capable of resolving private negotiations without government interference.



Bob Williams, President of the Evergreen Freedom Foundation and a member of ALEC's Board of Scholars, speaks on the merits of the Electoral College.

HEALTH AND HUMAN SERVICES TASK FORCE

Health Care Sharing Ministries Freedom to Share Act. Exempts health care sharing ministries from regulation under a state's insurance laws.

Health Care Sharing Ministries Tax Parity Act. Allows health care sharing ministries an equal tax deduction or credit when such a deduction/credit is provided by law for medical care expenses or health insurance premiums.

SCHIP Anti-Crowd-Out Act. Prohibits states from providing SCHIP to individuals who are eligible for low-cost coverage through their employer. If SCHIP-eligible individuals have access to high-cost, employer-sponsored coverage, the state will provide premium assistance in an amount equal to either: 1) the value of the SCHIP coverage that would otherwise apply to that individual, or 2) the difference between a customizable percentage of the total premium cost and the cost of the employee's share of the premium – whichever is lower.

Amendment to the Cancer Drug Donation Program Act. Further defines "cancer drug," for purposes of the Act, to not include drugs for the treatment of cancer that can only be dispensed to a patient with the drug manufacturer in accordance with federal Food and Drug Administration requirements.

Resolution on Ensuring Access to Convenient Care Clinics. Presents findings on convenient care clinics as providers of accessible, cost-effective, high-quality care that allows patients to receive the care they need.

Resolution on Medicaid Funding Through a Federal Block Grant. Petitions federal lawmakers to provide block-grant funding to the states for the Medicaid program.

CRIMINAL JUSTICE & HOMELAND SECURITY TASK FORCE

Mortgage Fraud Act. This bill modifies the Criminal Code by creating the crime of mortgage

fraud, which is committed when someone “knowingly makes any material misstatement, misrepresentation, or omission during the mortgage lending process, intending that it be relied upon by a mortgage lender, borrower, or any other party to the mortgage lending process.”

Bailable Offences Act. Provides procedures for determining the citizenship of arrestees and creates additional circumstances under which the accused may be detained without bail. This bill would prohibit bail for individuals who have illegally entered the country and also lists several other circumstances including terrorism or presenting a danger to children.

Campus Personal Protection Act. This Act amends state criminal codes and concealed carry laws to remove prohibitions on the possession or carrying of handguns on the campuses of postsecondary educational institutions by individuals issued valid licenses to carry concealed handguns. Also limits the application of rules and regulations established by governing boards of postsecondary educational institutions on the possession of firearms on campuses by individuals issued valid licenses to carry concealed handguns.

Model State Law to Abolish Human Trafficking. The purposes of this Act are to combat trafficking in persons; to protect victims of human trafficking, assist them in the rebuilding of their lives, and to restore them to their inherent dignity; to ensure the just and effective punishment of traffickers.

Fair and Legal Employment Act. This bill makes it a crime to knowingly employ illegal aliens. The bill mandates the use of the e-verify system to establish the citizenship status of employees and establishes penalties for employers who fail to comply.

Taxpayer and Citizen Protection Act. Requires that evidence of United States citizenship be presented by every person to register to vote, at the polling place prior to voting, and that state and local governments verify the identity of all applicants for certain public benefits. It also requires that government employees report United States immigration law violations by applicants for public benefits.

Immigration Law Enforcement Act. Requires officials, agencies and personnel of counties, cities and towns to fully comply with and, to the full extent permitted by law, support the enforcement of federal immigration laws of the United States.

Unlawful Release of a Minor's Personal Information. Makes it a crime for a person to knowingly select and place, or direct the placement, on the world wide web of the identifying information of a minor if the dissemination of the identifying information knowingly poses an imminent and serious threat to the minor's safety and the person has knowledge of, and reckless disregard for the serious and imminent threat.

NATURAL RESOURCES TASK FORCE

ALEC Energy Principles. These updated principles define a comprehensive strategy for energy security, production, and distribution in the states consistent with Jeffersonian principles of free markets and federalism.

Task Force News: Staff Update



Matt Warner, ALEC's new Director of the Natural Resources Task Force.

Matt Warner has replaced Dan Simmons as the new Director of the Natural Resources Task Force. **Jeff Reed**, has been named the new Director of the Education Task Force. **Lindsay**

Miller has been promoted to Manager of Events and Meetings. **Don Sheff** has just joined ALEC as the new Legislative Assistant for the Tax and Fiscal Policy Task Force.

Under AB 9807, the modest sales commissions paid to independent New York-based web sites for Amazon ads subjects Amazon to tax collection obligations. The new law places significant technological burdens on Amazon, since the company did not previously determine the statehood of the “Associates Program” online advertisers.

In its lawsuit, Amazon has noted that New York tax officials have referred to AB 9807 as the “Amazon Tax.” In fact, the new law is the statutory successor of a failed 2007 attempt by the New York Tax Department to rewrite its rules to require online retailers collect taxes on all purchases by New Yorkers (The bureaucratic maneuver was promptly reversed following news reports that spotlighted it). Amazon’s lawsuit complaint argues it was unconstitutionally singled out for discriminatory taxation.

Amazon.com v. New York State Department of Taxation and Finance may be on a long road all the way to the Supreme Court. In the meantime, Amazon has announced it will comply with the new tax law, and filed as a vendor with New York tax officials.

Overstock.com Pulls the Plug on New York

Utah-based online retailer Overstock.com has struck back even harder against New York. Overstock lacks any physical presence or employees in New York, but has an associate advertising program similar to Amazon. Like Amazon, Overstock also insists there are technological difficulties in even ascertaining whether certain online advertisers are based in New York or not. To avoid any taxes and penalties under AB 9807, Overstock notified over 3,400 New York-based affiliate advertisers that they could no longer provide ads for Overstock as of June 1. Overstock’s business-minded response to AB 9807 suggests a failure by the tax law’s supporters to anticipate the ramifications of heavy-handed taxation and regulation.

Shortly after announcing its intention to sever relationship with New York online advertisers, Overstock filed its own legal challenge to AB 9807. It has asked a New York State Court for a preliminary injunction to stop the new tax law from being enforced.

Extraterritorial State Taxation Setting a Bad Example?

Unfortunately, other states could be joining ranks with New York by expanding their own taxing powers. For example, California Assembly Bill 1840 would eliminate

clear statutory rules that currently exempt out-of-state retailers from tax collecting exemptions burdens.

Despite AB 1840’s hollow claim of respect for “substantial nexus” requirements under the federal constitution, the bill’s removal of certainty from the law poses significant problems for out-of-state online retailers. Removal of the statutory language exempting out-of-state retailers from the California Code empowers California tax bureaucrats to expand state sales tax jurisdiction through administrative decision-making. Under AB 1840, retailers would face the costly uncertainties of administrative proceedings and litigation in California.⁶

ALEC Model Answer to Unfair Interstate Taxation

With AB 9807’s deadline now passed, many other states and businesses are rightfully worried. However, in-state retailers in Virginia, Texas, and Iowa can breathe a bit easier. They have state laws based on ALEC’s *Sales and Use Collection Protection Act*. The ALEC model was adopted precisely with concerns over aggressive foreign state tax collectors in mind. It offers businesses limited protections from unfair and costly administrative wrangling and litigation at the hands of foreign-state tax officials and courts.

When a foreign state demands an in-state business collect sales and use taxes, the ALEC *Sales and Use Collection Protection Act* allows an in-state business to go before its state court for a ruling. The ALEC



Continued on next page

ALEC POLICY FORUM

AMERICAN LEGISLATIVE EXCHANGE COUNCIL

model provides in-state businesses a special declaratory judgment action to determine whether such businesses have the required nexus (or physical presence) in foreign states that justify tax collection and remittance duties. Judicial decisions issued by state courts must be honored in foreign states under the federal Constitution's Full Faith and Credit clause.

The *ALEC Sales and Use Collection Protection Act* is a simple but important mechanism for states to protect their businesses from overreach by foreign state tax collectors such as New York. The ALEC model also serves as an important safeguard for states against any other extraterritorial tax grabs that foreign state tax officials might devise in the future.

Conclusion

Under the federal constitution, individual states stand on equal footing with one another. They possess authority to regulate and tax their own *intrastate* commerce. But that authority exists in the context of Congress's constitutionally-enumerated power to regulate *interstate* commerce. Supreme Court rulings make clear that states cannot place undue burdens on interstate commerce, either by regulation or taxation. Extraterritorial exertions of state taxing power such as

New York's new tax law upset the constitution's balance. Hopefully, California and other states will ultimately refrain from following New York's heavy-handed interstate tax grab.

Given the significant constitutional defects of AB 9807 raised in the lawsuits filed by Amazon and Overstock, New York's new tax law will likely be struck down in court. But, interstate commerce is nonetheless chilled while states and businesses wait for the courts to put AB 9807 out to pasture.

Until the courts bring a hoped-for vindication of constitutional principles, states are not with power to mount their own counter-offensive against AB 9807 and other extraterritorial state taxation schemes. ALEC's *Sales and Use Collection Protection Act* gives states a means of reasserting state equality and protecting their respective in-state businesses from unfair taxation. ALEC's model is also a useful device for states to discourage future attempts by foreign state tax officials to creatively reach beyond their lawful tax borders.

Seth Cooper is the Director of the Telecom & IT Task Force for the American Legislative Exchange Council.

- 1 See NY A.9807-C/S.6807-C (2008) (PART OO-1), available at <http://www.assembly.state.ny.us/leg/?bn=A09807> (June 20, 2008). Codified at N.Y. Chapter 57 of the Laws of 2008.
- 2 *Ibid* (emphasis added).
- 3 NY State Dept. of Taxation and Finance, "New Pre New Presumption Applicable to Definition of Sales Tax Vendor, TSB-M-08(3)S, May 8, 2008, available at http://www.tax.state.ny.us/pdf/memos/sales/m08_3s.pdf (June 20, 2008).
- 4 504 U.S. 298, 112 S.Ct. 1904, available at <http://supreme.justia.com/us/504/298/case.html> (June 20, 2008).
- 5 483 U.S. 232, 250, 107 S.Ct. 2810 (internal quote omitted), available at <http://supreme.justia.com/us/483/232/> (June 20, 2008).
- 6 See CA AB 1840 (2008), available at http://www.leginfo.ca.gov/pub/07-08/bill/asm/ab_1801-1850/ab_1840_bill_20080124_introduced.html (June 20, 2008).

AMERICAN LEGISLATIVE EXCHANGE COUNCIL

Copyright © 2008 by the American Legislative Exchange Council. All Rights Reserved. Except as permitted under the United States Copyright Act of 1976, no part of this publication may be reproduced or distributed in any form or by any means, or stored in a database or retrieval system without the prior permission of the publisher.

Published by
American Legislative Exchange Council
1101 Vermont Avenue, NW, 11th Floor
Washington, D.C. 20005

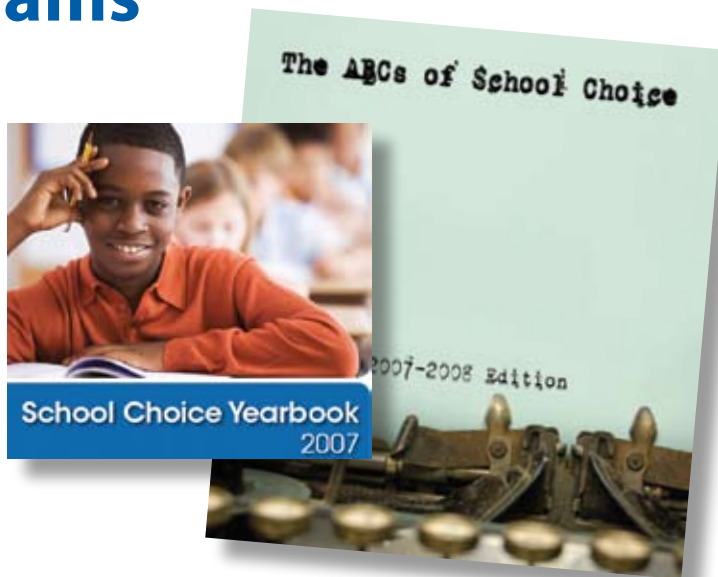
New Publications Shed Light on School Choice Programs

By Justin Tuskan

The world of school choice can often seem daunting to the untrained eye. The average individual may have difficulty determining what, if any, school choice programs exist in his or her state. Moreover, for a legislator interested in introducing a tax credit or voucher bill, it is important to have information that details which style of programs are currently working nationwide, and which might need retooled or adapted. Fortunately, two outstanding ALEC members—the Alliance for School Choice and the Friedman Foundation for Educational Choice—have produced publications designed to give those interested in school choice the guidance that they seek.

Legislators are enacting new voucher and tax-credit programs every year. With that in mind, lawmakers and policy analysts are in need of an easy-to-use guide that highlights the key elements of school choice programs in the states. Enter the Friedman Foundation's 2007-2008 addition of the *ABC's of School Choice*, a comprehensive publication that breaks down the key elements of states' school choice initiatives. From Arizona's Displaced Pupils Choice Grants to Ohio's Autism Scholarship Program, the *ABC's of School Choice* tackles each program with a precision eye, and details key elements such as scholarship values and eligibility requirements. For easy reference, a school choice dictionary and frequently asked question section are also provided.

Like its counterpart from the Friedman Foundation, the Alliance for School Choice's *School Choice Yearbook 2007* provides a state-by-state breakdown of the nation's key educational choice programs, highlighting the all-important facts and figures such as scholarship caps and program funding amounts. It also provides a unique section full of original research and student performance figures that is designed to illustrate what many in the movement already know; school choice is a viable alternative to traditional



educational options, and provides students with the high level of classroom learning that they deserve. Additionally, the *School Choice Yearbook* spends several pages explaining the ins and outs of both voucher and scholarship tax credit programs.

Thanks to the resources from our partners at the Alliance for School Choice and the Friedman Foundation, ALEC members, and indeed all those interested in education reform, have access to two phenomenal resources that break down complex programs into easily understood summaries. These publications also provide the background information necessary to show that, in order to make real changes to the education system in our states, reforms such as school choice are the logical step.

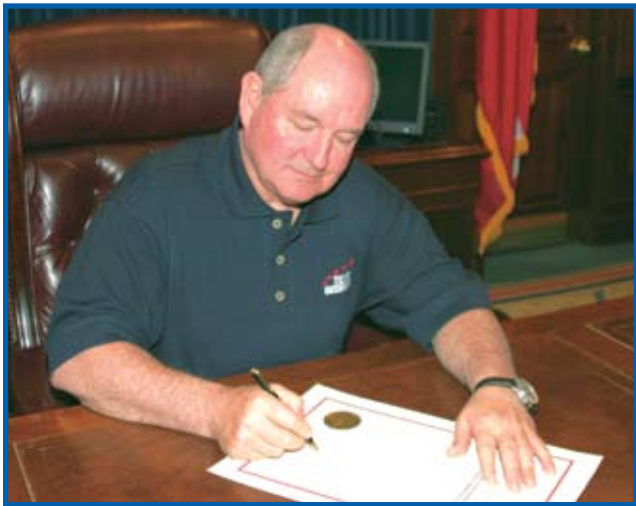
To receive a copy of either the *School Choice Yearbook* or the *ABC's of School Choice* visit www.allianceforschoolchoice.org or www.friedmanfoundation.org.

Justin Tuskan, currently a law student at Duquesne University in Pittsburgh, PA, was formerly the Legislative Assistant to the Education Task Force.

Education Reform Round-Up:

Georgia, Utah, and Missouri Lead the Way

School Choice Southern Style



Georgia Governor Sonny Perdue signing a bill into law.

Georgia Governor Sonny Perdue signed a \$50 million Corporate and Individual Scholarship Tax Credit program into law in May, providing hope to thousands of Peach State families who want to send their children to better schools.

The new law allows corporations to receive a 100 percent tax credit for donations—up to 75 percent of their total state tax liability—to organizations that grant scholarships to children who want to attend private schools. Individuals can also donate up to \$1,000 per person (or \$2,500 per married couple) to these organizations and receive a 100 percent tax credit for these contributions. Student scholarship organizations must spend at least 90 percent of donations on scholarships.

The intent of the legislation is to provide school choice to low-income families, whose children may be confined to failing schools. The Alliance estimates that, if the full \$50 million is utilized, more than 10,000 children could benefit from the law.

The Alliance for School Choice—the nation's largest nonprofit organization promoting school vouchers

and scholarship tax credit programs and an ALEC Member—hailed Governor Perdue's action. "With his actions today, Governor Perdue has sealed his legacy as one of America's foremost education governors," said Lori Drummer, director of state projects for the Alliance. "Georgia is now a national leader in a school choice movement that is gaining momentum."

The Alliance for School Choice also congratulated ALEC members Rep. David Casas, the House sponsor of the bill, and Sen. Eric Johnson, who shepherded the bill through the Senate, for their leadership. According to Drummer, the Georgia Family Council was also instrumental in educating the public about the tax credit bill's benefits.

"Georgia will now join five other states—Arizona, Florida, Iowa, Pennsylvania, and Rhode Island—in offering scholarship tax credit programs," said Alliance President Charles Hokanson. "Georgia's program will be the second largest in the country, following Florida's \$88 million program, and just ahead of Pennsylvania's, which is capped at \$44.6 million. Including the new Georgia law, there are seven scholarship tax credit programs operating in the United States and 10 voucher programs."

Georgia's current school choice program—the extremely popular Georgia Special Needs Scholarship—is not impacted by this legislation.

Utah and Missouri Expand Teacher Certification Programs

The Utah State Board of Education approved the expansion of a state-approved teacher certification program. The program, offered by the non-profit group and ALEC Member, the American Board for Certification of Teacher Excellence (ABCTE), was approved in Utah in 2004 as a pilot program for secondary mathematics. Based upon the results of the pilot, all certifications offered by ABCTE will now be accepted.

“The presentation by Utah State Office of Education made it clear that ABCTE is a very rigorous program and the teachers our schools are hiring from this program are high quality. We want to make sure our school districts have access to the best talent in the state and this program will help us accomplish that,” said Mark Cluff, Vice Chairman, Utah State School Board. State School Superintendent Patti Harrington added, “a careful review of the ABCTE process convinced the Utah State Board of Education of the appropriateness of ABCTE as an acceptable alternative route to initial Utah licensure.”

ABCTE teamed up with a strong grassroots education innovation group, Parents for Choice in Education, to work to expand the program in Utah. “PCE knows that great education starts with great teachers. With Utah facing a severe teacher shortage, we wanted to make sure there were more routes to certification. We were very impressed with the quality of teachers this alternative certification route brings into the classroom and set our sights on facilitating an expansion of the entire ABCTE program,” said Robyn Bagley, Board Chairman for PCE.

In addition to the current math certification, ABCTE will offer Passport to Teaching certification in elementary education, special education, English, general science, biology, physics, chemistry, and history. The program is designed specifically to recruit, prepare, and certify mid-career professionals who want to transition into teaching.

In Missouri, Governor Matt Blunt has signed a bill this session, which will allow an additional option for teacher certification. The new option, offered by the American Board for Certification of Teacher Excellence (ABCTE), is designed specifically for mid-career professionals.

“We need to provide the opportunity for highly motivated people with education and experience in these areas to have the training to bring their expertise to the classroom. Missouri’s current system of alternative certification of professionals who want to become teachers is too restrictive. I support this alternative, to allow certification through the American Board for Certification of Teacher Excellence,” Governor Blunt said.

Missouri becomes the eighth state joining Florida, Mississippi, South Carolina, New Hampshire,



Missouri Gov. Matt Blunt greets students at Trautwein Elementary School. (UPI Photo/Bill Greenblatt)

Pennsylvania, Idaho, and Utah to recognize ABCTE’s Passport to Teaching program as a route to state teacher certification. Nationwide, nearly 1,000 people have completed certification with Passport to Teaching and 2,250 are currently enrolled in the program.

In an unprecedented show of support for the new program, Governor Blunt will embark on a multi-city tour to ensure awareness of this new opportunity for Missouri professionals. ABCTE President David Saba will join the Governor. “The Passport to Teaching program is a great addition to the current routes to certification in Missouri because it attracts talented professionals who wouldn’t otherwise enter teaching through a traditional route,” said Saba. “We are very excited to introduce our innovative program in Missouri and start recruiting career changers into the program today.”

Teacher Recruitment Events

ABCTE is planning a tour of free teacher recruitment events in Utah and Missouri this fall. School districts are invited to attend to meet prospective teachers for their schools and learn more about how the Passport to Teaching program works. For more information, visit www.abcte.org/events or call 1-877-669-2228.

Lessons from the States

Principles of Limited Growth Have Impact in Maryland

By Delegates Susan Aumann, Gail Bates & Nancy Stocksdate

With the defeat of Gov. Robert Ehrlich in 2006 came the end of four years of fiscal sanity in the not-so-“Free State” of Maryland. Immediately following the election of Gov. Martin O’Malley, the political rhetoric to convince the public that Maryland was in dire fiscal straits and needed massive tax increases began—this despite a \$1 billion surplus left by the previous Governor. What started as a reference to a structural deficit (where planned spending exceeds planned revenues), soon became an actual deficit (with immediate budgetary shortfalls) as legislative leaders dropped the word structural. Our counter message to this was simply that, “we have a spending problem, not a revenue problem.”

Gov. O’Malley’s very first budget not only spent the \$1 billion surplus, it increased spending by more than 8 percent, fueling the case for large tax increases. As the not-so-loyal opposition, the six (out of 26) minority members of the House Appropriations Committee developed a plan to limit spending growth to three percent per year, which would allow the state to grow out of its structural deficit over two years without tax increases. Our goal was to avoid the trap

of offending specific special interests by shaping our comments to address the larger issue of “how much growth is reasonable?” Maryland’s Governor has great authority over the budget process and by offering overall growth limits we left the Governor responsible for setting priorities.

We submitted a single amendment to the budget to cap spending increases. This amendment helped change the tone of the debate and forced the leadership to defend the entire budget. We kept the discussion focused on fiscally sound spending limits, taking the high road. We proved, over and over, that limiting growth for two years would allow us to let revenues catch up without tax increases. Unfortunately, while our amendment failed, the budget battle was far from over and we did succeed in convincing some members on the other side of the aisle.

With the surplus spent, the Governor kept up the drumbeat of serious fiscal problems needing a massive infusion of cash throughout the fall. He then called for a special session of the legislature to solve our perceived problem and prevent catastrophe. At the same time,



From left, Maryland Delegate Nancy Stocksdate (ALEC State Chair), Delegate Susan Aumann, and Delegate Gail Bates

a real fiscal crisis was looming on the horizon as problems in the housing market became clearer and energy costs for consumers in Maryland increased by more than 72 percent.

With Marylanders struggling to make ends meet, the Governor and legislative leaders drove through the largest single tax increase in Maryland's history (\$1.5 billion). The sales tax was increased and extended to computer services. Cigarette taxes, personal and corporate income taxes were increased, as were a host of other fees. All of this was done without a real budget before us, only a projected budget put together by legislative services. We, in the minority, continued to offer fiscal restraint as a solution to the "crisis" and we proposed an alternative budget which would allow limited growth and temporary reduction of some reserves, to allow revenues to catch up. In response to our calls to rein in spending, the legislature suggested the Governor reduce spending by 1.5 percent, or \$500 million. Our message was having an impact.

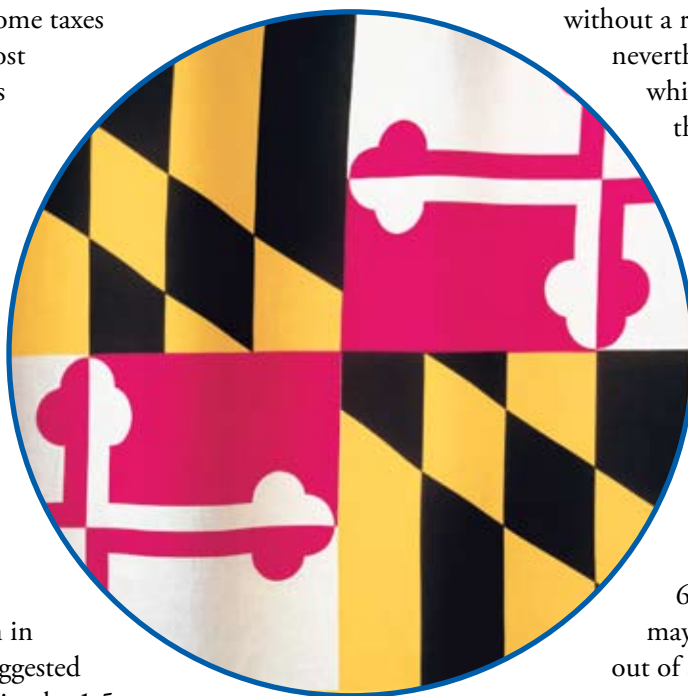
As the new legislative session opened in 2008, the Governor, armed with the massive tax increase, proposed a budget that again massively increased spending, this time by 6 percent, despite the tightening economy. We again provided an alternative budget which included a modest increase in spending growth of 2 percent, keeping within inflation rates. Our proposed budget would have allowed the state to repeal the much-maligned computer services tax, and still provide more funds for programs and services simply by limiting the rate of increase in funding. Once again, we garnered support from core constituencies and developed a media plan to get the message out to the general public.

As the session wore on, worsening economic conditions in the state drove revenue projections downward, increasing the budget deficit despite the tax increases. Legislative leaders had little choice but to enact further reductions in spending. Consequently, nearly 75 percent of our reductions were adopted. We were also successful in repealing the computer services tax.

Although we proved it could be repealed without a replacement tax, the legislature nevertheless approved a compromise which reduced spending by half the anticipated revenue and back-filled the remainder with a "millionaire's" tax, which increased the state tax on income of over \$1 million. Since this higher tax includes small business income of sole proprietorships, partnerships, and Subchapter S corporations, we fear that the impact on those businesses that create 65 percent of Maryland jobs, may drive them out of business or out of state.

Our constant efforts had an impact on the budget, but more importantly, they had an impact on the general public. We succeeded in changing the tone of the debate, in forcing the tax and spenders to play defense. Popular bumper stickers on Maryland cars now include such slogans as "Taximus Maximus", "Owe Malley", and "Welcome to Maryland – what's in your wallet". We plan on increasing our efforts this year to include public briefings on how other states are managing their state budgets. We will also continue to offer a fiscally prudent alternative budget which will provide for core government services while protecting our citizens from additional taxes.

Maryland Delegates Susan Aumann, and Gail Bates, are long time ALEC members. Del. Nancy Stocksedale is ALEC's Maryland State Co-Chairman.



Transparency in the Creation of Lawsuits: How ALEC Members are Exposing Trial Lawyer Earmarks

By Amy KJose

The abatement of Congressional earmarks for pet pork-barrel projects has become an important focal point of politics in recent years. This abuse of the power of the purse has outraged the public. When Sen. Tim Johnson (D-SD) and Senate Majority Leader Harry Reid (D-NV) sponsored an amendment to a veterans' bill that would have earmarked \$1 million for the Thomas Daschle Center for Public Services in his home state of South Dakota, people rose up in arms. To help curb such frivolous spending of taxpayer dollars, the federal government and a number of state legislatures have passed very popular budget transparency legislation, allowing the public to hold their legislators accountable for their tax dollars. ALEC's Tax and Fiscal Policy Task Force has had much success with our *Taxpayer Transparency Act*.

This tenet can certainly be applied elsewhere. Similar transparency is the solution to the abusive use of another form of earmark: the trial lawyer earmark. ALEC's Civil Justice Task Force has approved the model *Transparency in Lawsuits Protection Act* that would shed light on attempts by the trial bar to create opportunities in legislation for windfall cases. These opportunities are often manifested in regulatory and/or other legislation through the use of suggestive language that allows for trial lawyer flexibility in the application of the law to private rights to sue. Judges will on occasion imply a new right for the private citizen to sue based on what they see as the intent of the legislation. This legislation may not specifically speak to the enforcement of its content, but courts can imply that a private right to sue exists based on their view of the statute. And what has been deemed trial lawyer earmarks are efforts to manipulate legislative language in order to sway judges concerning the implied rights to sue.

Such attempts to create these trial lawyer earmarks are rampant in state legislatures where legislative staffers are fewer and legislation is quicker to move. Legislative text is generally not as scrupulously dissected in state houses as it is in Congress.



For example, in 2007, the Tennessee state legislature considered a bill (S.B. 154) that would have banned the use of trans-fatty acids in restaurants. Similar bills in other states have provided penalties and have bestowed enforcement responsibility on the appropriate executive office. Still other legislation remains interestingly silent on its enforcement. In this instance trial lawyers have an opportunity to argue for enforcement via an implied right to sue. The Tennessee bill, however, went a bit further in attempting to secure a future windfall for the trial bar. While the legislation provided civil penalties for failure to comply with the law, it slyly included these penalties "in addition to any other sanction or remedy available under law." This language certainly doesn't enunciate a new right to sue any organization that fails to comply with the law; however, this suggestive language would make it a bit easier for the trial lawyer to argue that the legislature intended to include a private right of action. With a good lawyer and a friendly judge, the suggestive language just might create a new niche in the lawsuit business. Whether or not legislators have thought that a trial lawyer was the best advocate to fairly enforce the law, this type of legal manipulation empowers the trial lawyer to do just that. Sometimes a new right to sue may be the best means of enforcement; however, isn't that up to the state's elected body to decide?

Trial lawyer earmarks have likely been included in legislation regulating the oil industry, the pet food industry, the insurance industry, the pharmaceutical industry, the list is endless. Any legislation, particularly of a regulatory nature, could have a sleeping implied right to sue.

Most examples of trial lawyer earmarks likely go unheard of until the opportune time when the 'right' circumstances align for a lawsuit. If some trans-fatty acids were found in a hamburger, and the individual who ate the burger also suffers from some disease associated with trans-fatty acids, the restaurant might end up in court. Certainly, most judges would recognize the incredulity of this claim, but regardless of whether the claim is successful, the restaurant would be forced to spend time and money defending itself.

In an effort to fight these devious attempts, the *Transparency in Lawsuits Protection Act* asks state legislatures to apply the popular tenet of transparency to the legislative creation of rights to sue. If the legislature wants to create a right for the private citizen to sue, they must say so. If they prefer their legislation be enforced through other means, then the courts should stop 'implying' rights to sue where they often were not meant to exist. Attempts by the trial bar to create new rights to sue will then have to be debated openly, and elected legislators can then determine what is in the best interest of the state.

Pioneering legislators in Mississippi, Georgia, New Mexico, and Ohio have introduced this legislation in an attempt to curb earmark abuse and ensure clarity in the articulation of legislation. Oddly enough, the *Transparency in Lawsuits Protection Act* has had a bit more difficulty passing state houses than budget transparency legislation; the trial bar lobby has an arguably strong presence in many state houses.

In Ohio, the legislation has had the most success. But success gives the opposition even more reason to fight. A lobbyist for a division of the trial bar called the Ohio bill sponsor, Senator Bill Seitz, the night before the Senate vote to inform him of her client's opposition to the bill. Interestingly enough, she was unable (read: unwilling) to explain her client's problem with the legislation. Perhaps their arguments against it pertain to something they would rather not broadcast. Fortunately for those with an interest in clarity in the law, the Ohio legislation has passed the Senate and now sits in the House Judiciary Committee.

In attempting to fight legislation based on ALEC's model *Transparency in Lawsuits Protection Act*, the trial bar will have to let the bill pass without a grimace or risk the advertisement of their true interests.

Amy C. Kjose is the Civil Justice Task Force Director at the American Legislative Exchange Council.



Breaking the Ties that Bind:

Union Bill to Disrupt Public Safety in the States

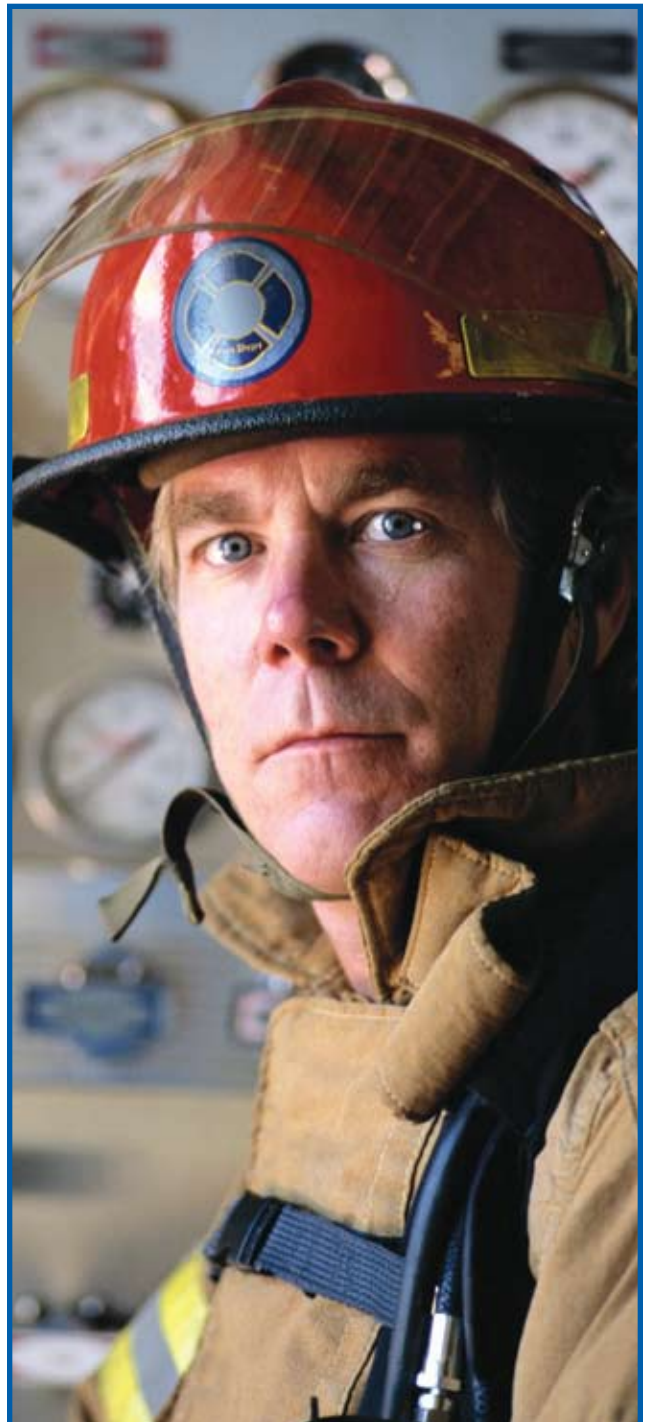
By Courtney O'Brien

The “Public Safety Employer-Employee Cooperation Act,” H.R. 980, which last year passed in the U.S. House of Representatives by a vote of 314 to 97 and is currently under consideration by the U.S. Senate, will force state and local governments to allow firefighters and police officers to unionize. The bill requires state and local governments to recognize one union as the “exclusive” bargaining representative for public safety employees. Local governments would be forced to bargain with union officials according to the broad terms of this Act which takes away an employee’s right to negotiate directly with their employer—a right ALEC believes is fundamental to a successful employer-employee relationship. H.R. 980 severely intrudes on state sovereignty, disregards the specific needs in the communities of each state, and ignores the 10th Amendment of the U.S. Constitution.

If a state does not adequately comply with the burdensome mandates of the Act, the Federal Labor Relations Authority is empowered to sue the state in federal court. The bill, in fact, gives any interested party the right to sue their local government for enforcement. In other words, if a state does not amend its laws to meet the terms of H.R. 980, the Federal Government can take the state to court and/or they will be subject to lawsuits filed by firefighters and police officers. The twenty-two Right-to-Work states that have laws barring monopoly collective bargaining for public safety employees will have no choice but to change their laws.

This bill is also a threat to public safety, and it puts immense power in the hands of unions. H.R. 980 does prohibit strikes, but such rules have not prevented labor unions from taking part in unlawful strikes in the past. In 1981, 13,000 of the 17,500 members of the Professional Air Traffic Controllers Organization walked off the job in direct defiance of federal law. In a similar fashion, the New York City Transit Workers went on strike in 2005, effectively shutting down New York City for two days.

Imagine your community’s local firefighters, police force, or emergency medical services walking off the job for two or three days. With no one to stand in as



replacements, the power is in their hands, while the risk lies in yours. President Ronald Reagan famously fired the air traffic controllers in response to their illegal strike, but firing police and firefighters may not be a viable option for states and localities. In addition to the threat of a strike, there are other actions these public safety employees could take that would threaten society's dependence on emergency services such as work slowdowns or organized sickouts. Organized labor disruptions like strikes would not only interfere with the allocation of emergency services and protection, but could also potentially lead to the loss of lives.

This legislation is an example of another unfunded mandate imposed upon states as unionization will lead to increased demand for higher benefits and wages. States should be allowed to adopt their own labor statutes that best provide for their public safety employees while concurrently keeping costs and taxes low for citizens. Around the country, local governments are struggling to meet the ever-increasing demands of public employees. The city council of Vallejo, California, in May 2008, voted to file for bankruptcy in the hopes of re-negotiating contracts with its public safety employees. The city is currently facing a \$6 million debt, and according to council member Joanne Shivley, "the problem is basically bloated union contracts." Further evidence lies in a 2007 report by the Congressional Budget Office which released a cost estimate of \$44 million over the 2008-2012 period to implement H.R. 980. The \$44 million is only an estimate and the actual cost could be higher once the bill takes effect.

The bill could also lead to dramatically higher costs due to the possible loss of volunteer firefighters. These men and women protect numerous communities across the nation and H.R. 980 threatens the existence of these departments. Union bosses would have monopoly-bargaining powers and could create contracts barring professional firemen from serving as volunteer firefighters—an approach unions prefer because it effectively eliminates competition. An unfortunate side-effect of this strategy is that the elimination of volunteer firemen will leave communities responsible to pay for the professional firemen who must be hired in order to fill the void.

Finally, the case for enacting this bill is weak at best, considering that forty-eight states currently have labor laws governing public safety employees and twenty-nine states already meet the H.R. 980 standard. The twenty-one states that do not meet the criteria will be

forced to adhere to this law or face federal intervention. Representative Susan Lynn (TN) states, "H.R.980 is a clear violation of the 10th Amendment to the U.S. Constitution. As a state legislator from a right to work state, I am very concerned with a federal government that would overstep its bounds by usurping our rights, jeopardizing the safety of our citizens, and by costing our state and local governments millions of dollars. Collective bargaining decisions are a state's right to make or not make."

In Tennessee, legislation to unionize public safety employees has been rejected numerous times. This state is an example of both Democrats and Republicans recognizing the dangers in unionizing public safety employees and acting to prevent the passage of bills like H.R. 980. Rather than answering a desperate need, H.R. 980 will disrupt state labor laws and defy their constitutional right to exist in the first place. States should maintain the freedom to choose what is best for their specific localities.

The relationship that exists between local police, firefighters, and elected officials is not simply one of employer – employee, in many cases it is one of friends, family, and/or neighbors. The passage of H.R. 980 will sever the connection between the employer and employee, while the union bosses stand by with scissors in their hands. Citizens will see their taxes increase, volunteers will be lost, and state sovereignty disregarded. H.R. 980 comes at great cost to our society, our communities, our States' autonomy, and most importantly, to the principle of Federalism, instituted by our Founding Fathers.

Courtney O'Brien is a Research Assistant at ALEC and currently a senior at the University of Michigan where she is pursuing a Bachelor's in Political Science and English.



Member News

ALEC Names New Executive Director



Alan B. Smith was named Executive Director of the American Legislative Exchange Council (ALEC) during its 2008 Spring Task Force Summit in Hot Springs, Arkansas, May 15. Smith received the unanimous approval of ALEC's Board of Directors.

"As ALEC continues to grow, improve, and promote free-market public policy in the states, Alan Smith is the best candidate to lead this national organization," said Arkansas State Senator and Senate Majority Whip Steve Faris, ALEC's current National Chairman.

Smith has been involved with ALEC as an active representative of a member company for more than two decades and has been a member of ALEC's Private Enterprise Board since 1992. Smith is also a former president of the State Government Affairs Council, a Washington, D.C.-based national organization of public affairs professionals.

During his career in corporate public affairs, Smith served two terms on the Strategic Planning Committee of the Council of State Governments, and in 1990 represented the National Conference of State Legislatures internationally through the Parliament-to-Parliament exchange with the recently-unified German states.

Smith was also a former Chief Counsel to the Minority in the Ohio House of Representatives, and managed a public affairs staff at a national trade association of consumer products manufacturers and suppliers and at two insurance companies. Smith is a former head of the enforcement section of the Ohio Division of Securities and served as Special Agent of the Federal Bureau of Investigation from 1969-1974.

Georgia Senator Judson Hill Visits Troops



Georgia Senator Judson Hill (R-Marietta) with Coach Mark Richt of the University of Georgia

Georgia Sen. Judson Hill (R-Marietta) lead Coach Mark Richt of the University of Georgia (UGA), along with five other college football coaches, to visit U.S. troops in the Middle East. The Coaches Tour took place May 20-26, 2008, to honor our military.

"Our troops stand up for freedom daily and sacrifice to protect the values and principles that have made America great," said Sen. Hill. "It's important that we do all we can to say 'thank you.' We are thrilled to travel with these wonderful coaches who also want to recognize our young men and women who are serving in harms' way."

"We love the soldiers and their willingness to sacrifice for our country," added University of Georgia Head Coach Mark Richt. "We want to support them not only in prayer, but also in person. I look forward to meeting many of our men and women in the armed forces during the visit."

Sen. Hill and two partners created Morale Entertainment earlier this year for the sole purpose of encouraging U.S. military around the world. Their first initiative was a trip to Bahrain, Qatar, and Kuwait with coaches Mark Richt of Georgia, Tommy Tuberville of Auburn, Randy Shannon of Miami, Jack Siedlecki of Yale, and Charlie Weis of Notre Dame. Sen. Hill and the coaches also played flag football with teams consisting of servicemen and women. They also visited with sailors onboard a ship. On their return trip they stopped at Landstuhl Regional Hospital at Ramstein Air Base in Germany to visit with injured soldiers.

Sen. Judson Hill serves as Chairman of Reapportionment and Redistricting Committee and the Republican Caucus Vice Chairman. He represents the 32nd Senate District which includes portions of Cobb and Fulton counties. The website is <http://www.coachestour2008.com>.

ALEC Members in Conference Call with White House



Last December at ALEC's States and Nation Policy Summit in Washington, D.C., the Tax and Fiscal Policy Task Force unanimously passed a resolution urging Congress to permanently extend President Bush's 2001 and 2003 tax cuts. Jonathan Williams, Director of ALEC's Tax and Fiscal Policy Task Force worked with Michael Correia, ALEC's Director of Federal Affairs, organizing an exclusive conference call between task force members and the White House to discuss the importance of making President Bush's tax relief permanent.

Keith Hennessey, Assistant to the President for Economic Policy and Director of the National Economic Council and Janet Weir Creighton, Deputy Assistant to the President and Director of Intergovernmental Affairs, led the discussion.

"Some of the angst we are currently seeing among investors is in regard to the looming expiration of the Bush tax cuts," said Iowa State Representative Jamie Van Fossen, who chairs ALEC's Tax and Fiscal Policy Task Force. "If no Congressional action is taken, taxpayers will witness the revival of the notorious federal death tax and marriage penalty, lose essential capital gains and dividend tax relief, see the expiration of the child tax credits, and experience increases in personal income tax rates."

All said, more than 115 million families would see an average tax increase of \$1,800 if the tax relief is not made permanent. "Allowing the tax cuts to expire will result in the largest tax increase in our nation's history, which will undoubtedly slow the growth of our economy, hurting millions of Americans," said Williams. "If Congress fails to take action, our nation's record economic growth will be put at serious risk."

Members Race to Hot Springs



Eating Dust. Rep. Don Marostica (CO) in Sen. Bill Cadman's (CO) rear view mirror on their way to Hot Springs, AR.

Sen. Bill Cadman, and Rep. Don Marostica, from Colorado avoided long lines at the airport and traveled to ALEC's Spring Task Force Summit in Hot Springs, AR, in style. Rep. Marostica drove his 2008 Harley-Davidson Screaming Eagle accompanied by Sen. Cadman on his own motorcycle. They are pictured here just south of Tulsa, OK, at about 70 miles-per-hour.

Amaral Won't Seek Seventh House Term



*Rep. Amaral discusses senior tax credit legislation with his House floor neighbor, Rep. Victor Moffitt.
Photo: RI House of Representatives*

Rhode Island State Rep. Joseph Amaral, Deputy Minority Leader and a long-time ALEC member, is retiring from the legislature. Rep. Amaral will continue his career in education as the principal of Portsmouth Middle School. Of his legislative accomplishments he said he was most proud of his efforts to reduce the tax burden on Rhode Island's citizens but he felt that the state still lags in economic competitiveness and needs to do more to attract business.

ALEC 35th Annual Meeting – Chicago, IL
July 30 – August 2 • Onsite Registration Available



States & Nation
POLICY SUMMIT
December 4-6, 2008
The Marriott Wardman Park Hotel
Washington, D.C.

Legacy Membership Program

ALEC invites its legislative members to become part of the Legacy Membership Program. By joining this program, ALEC Legacy Members help ensure the long-term sustainability of the organization through a restricted capital fund. The first 50 contributors will become “Charter Legacy Members” and receive free registration to ALEC conferences for life, a permanent name badge for this purpose, and a plaque honoring them for their commitment to ALEC and the organization’s Jeffersonian principles. Finally, when funds from the program are used for infrastructure improvement within ALEC, Charter Legacy Members will be honored with a dedication plaque.

For more information contact Michael Conway, Director of Corporate and Legacy Programs, at 202-742-8528 or by e-mail at mconway@alec.org.



AMERICAN LEGISLATIVE EXCHANGE COUNCIL
ALEC

1101 Vermont Ave., NW, 11th Floor
Washington, D.C. 20005
www.alec.org

NONPROFIT ORG
US POSTAGE

PAID

SUBURBAN MD
PERMIT No. 2295